

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No: 1:22-cv-00071

Honorable:

BARRY MEHLER,

Plaintiff,

v.

FERRIS STATE UNIVERSITY; DAVID L. EISLER, Individually and in his Official Capacity as the President of Ferris State University; RANDY CAGLE, Individually and in his Official Capacity as the Dean of Ferris State University's College of Arts, Sciences and Education; Ferris State University's BOARD OF TRUSTEES; and Anna P. Seibold, Anna L. Ramirez-Saenz, Rupesh K. Srivastava, LaShanda R. Thomas, George K Heartwell, Kurt A. Hofman, and Ronald E. Snead, in their Official Capacities as the Trustees of Ferris State University's Board of Trustees,

Defendants.

EXPEDITED CONSIDERATION REQUESTED

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

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Attorneys for Plaintiff

COMES NOW Plaintiff Barry Mehler, Ph.D., by and through his undersigned counsel of record, and pursuant to Fed. R. Civ. P. 65(a),(b) hereby moves the Court for entry of an emergency temporary restraining order and, thereafter, entry of a preliminary injunction, against all Defendants, and granting the relief more specifically requested below. In support, Plaintiff submits:

1. Professor Barry Mehler, Ph.D (Dr. Mehler) is tenured professor at Ferris State University (“FSU” or the “University”). Dr. Mehler has been a distinguished instructor and academic at FSU for over 30 years.

2. On January 9, 2021, Dr. Mehler shared videos with his students for the spring semester 2022, via private URL, introducing them to him and his classes. One such video (“The Video”) portrayed Dr. Mehler’s well-known, celebrated, and provocative style, and included criticism of the University’s COVID-19 policy, along with his long-standing performances used to draw students’ attention to plagiarism and his grading policy. The contents of The Video are clearly protected expression under the First Amendment.

3. The Video went “viral” and, when it came to the University administrators’ attention, they retaliated against Dr. Mehler by, *inter alia*, summarily removing him from instructing his courses, removing his faculty page from the University website, banning him from campus, and prohibiting him from speaking with current or former students or faculty.

4. The University’s actions, as well as its Employee and Student Dignity (the “ESD”) policy that purportedly served as the basis for its actions, are classic violations of Dr. Mehler’s First Amendment rights, including his academic freedom.

5. The University’s actions constitute unlawful retaliation against Dr. Mehler in violation of the First Amendment, operate as a prior restraint on First Amendment freedoms, operate as an unlawful application of the ESD and FSU’s bargained

agreement with its faculty, and otherwise violate the rights of Dr. Mehler, his students, and others under the First and Fourteenth Amendments.

6. The University's ESD underlying its actions is overbroad, vague, and otherwise unconstitutional under the First and Fourteenth Amendments, both on its face and as applied here.

7. FSU's actions against Dr. Mehler constitute an ongoing irreparable injury to his fundamental constitutional rights which justifies immediate injunctive relief.

8. Pursuant to LCivR 7.1(e), Plaintiff requests expedited consideration of this motion. In addition to the ongoing irreparable injury to Plaintiff's fundamental rights, Dr. Mehler is the subject of an ongoing investigation that may result in further or different actions against him during the usual schedule for briefing and decision.

9. In support of the present motion, Plaintiff relies upon the accompanying brief in support, Plaintiff's Verified Complaint [ECF 1], any oral argument heard by the court, any further evidence submitted in support of a preliminary injunction, and the record as a whole at the time of decision.

10. Plaintiff notes that, although hyperlinks are provided to The Video in the Verified Complaint and the brief in support of this motion, copies of The Video and accompanying course videos will be physically filed with the Court as noted on **Exhibit H** [PageID.105-106]. (All references to exhibits in this motion and the brief in support refer to the exhibits to the Verified Complaint [ECF 1]).

11. The undersigned has been notified that Mr. Robert M. Vercruysse of Clark Hill, PLC will be representing FSU in this matter. Upon Filing, the undersigned will promptly provide Mr. Vercruysse with a courtesy copy of the Complaint [ECF 1], the present motion, and the brief in support.

WHEREFORE, for the forgoing reasons, Plaintiff respectfully requests the Honorable Court immediately enter a temporary restraining order, followed by a preliminary injunction, which:

A. Orders all Defendants to immediately reinstate Dr. Mehler to his teaching duties for all his current classes;

B. Orders all Defendants to immediately restore and restore Dr. Mehler's access to his "Canvas" web pages for all his current classes;

C. Orders all Defendants to immediately restore Dr. Mehler's faculty page to the University's website.

D. Restrains all Defendants from prohibiting Dr. Mehler's access to campus, including his office;

E. Restrains all Defendants from prohibiting Dr. Mehler from having contact with current or former faculty or students at the University; and

F. Provides such further and additional relief that the Court deems just and equitable.

Respectfully submitted,

Dated: January 26, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2022, the foregoing document was filed with the United States District Court for the Western District of Michigan via its CM/ECF utility thereby causing service upon all parties of record by operation of the Court's CM/ECF system, except as follows:

No counsel has appeared on behalf of any Defendant party. Service of the forgoing document will be effectuated along with the Summons and Complaint upon all defendants in accordance with proofs of service to be filed. A courtesy copy will also be provided on January 26, 2022 to the following individual, via email only, who the undersigned has been informed will serve as counsel for some or all of the Defendants:

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